

**REMARKS/ARGUMENTS**

The present Amendment is in response to the Official Action mailed April 8, 2008. Claims 1, 20, and 21 have been amended. Claims 14-19 have been previously canceled. As such, claims 1-13, 20, and 21 remain currently pending in the present case. The following sets forth Applicants' remarks pertaining to the currently pending claims and the outstanding Action.

As an initial matter, Applicants wish to thank the Examiner for taking the time on May 2, 2008 to conduct a telephone interview to discuss the outstanding Action. In that discussion, proposed amended claims which were forwarded to the Examiner on April 29, 2008 were discussed in light of the rejections set forth in the Action. Specifically, in the Action, the Examiner rejected previously presented claims 1-5, 9-13, 20, and 21 under 35 U.S.C. § 102(b) as being anticipated by in view of U.S. Patent No. 5,599,279 to Slotman *et al.* ("Slotman"), and claims 6-8 as being obvious under 35 U.S.C. § 103(a) as being obvious over the combination of Slotman and U.S. Patent No. 5,683,464 to Wagner *et al.* ("Wagner"). While the Examiner did not agree that the claims forwarded to him on April 29, 2008 were allowable over the prior art, he did agree that the above claims were.

Specially, independent claims 1, 20, and 21 have been amended to positively recite the cervical disc replacement device in the system claimed therein. This is clearly not taught in Slotman, which only discloses various embodiments of a vertebral spreading instrument. In fact, in the specific embodiment of Slotman relied upon by the Examiner (*i.e.*, that of FIGS. 7-10), there is simply no discussion pertaining to the use of the instrument of that embodiment for any other application other than a vertebral distraction method. At the conclusion of the above-discussed May 2, 2008 telephone discussion, the Examiner agreed that amending independent claims 1, 20, and 21

to positively recite the cervical disc replacement device would in fact overcome the anticipatory rejections in view of Slotman.

However, in the May 2, 2008 discussion, the Examiner did indicate that a further review of both the Slotman reference and the prior art (whether previously cited or uncovered in an additional search) would be needed in this case. The Examiner indicated that it may in fact be possible that a combination utilizing the Slotman reference with another reference could be made in rejecting the claims under § 103 as being obvious. Specifically, the Examiner indicated that he believed the detachable nature of the distal portion of the distractor of Slotman to be somewhat novel, and therefore he might be able to combine Slotman with a reference that teaches the insertion of a cervical disc replacement device.

Applicants take the opportunity here to address the possibility of obviousness rejections being set forth in view of Slotman. In short, Slotman does not deal, in any way, with the insertion of two-piece spinal implants. In fact, Slotman does not disclose inserting any type of spinal implant. Rather, as is mentioned above, that reference is directed to a vertebral distraction device. While possible applicable during a procedure involving a spinal implant, Applicants respectfully submit that one of ordinary skill in the art would not have looked to the Slotman reference in arriving at the present invention. Quite simply, one of ordinary skill in the art would not have had a motivation to combine Slotman with another reference in order to arrive at the present invention. Furthermore, Applicants note here that they do not agree with the Examiner's contentions that Slotman discloses a pushing member as is set forth in certain of the claims. Thus, Applicants respectfully submit that Slotman neither anticipates nor obviates the currently pending claims.

In light of all of the above, Applicants respectfully request allowance of independent claims 1, 20, and 21. Although each of the dependent claims were not specifically discussed herein, Applicants respectfully submit that such claims are necessarily allowable based upon their dependence from independent claim 1. Thus, in view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 13, 2008

Respectfully submitted,

By 

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